IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1433 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : YES

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JASHVANTSINH RAMSINH CHAUHAN

Versus

BABUBHAI JAGANNATH SHAH

Appearance:

1. Civil Revision Application No. 1433 of 2001

MR DHIRENDRA MEHTA for Petitioner No. 1

MR SUNIT S SHAH for Respondent No. 1-2

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 23/07/2002

ORAL JUDGEMENT

#. Heard the learned advocates for the parties and perused the papers. This is a Revision Application under Section 115 of the Civil Procedure Code, 1908, challenging an order dated 27.4.2001 recorded by the

learned Civil Judge (J.D.) at Kathor in Surat District below an application Ex.35 in Regular Civil Suit No.22/2000 under which the learned trial Judge dismissed the said application of the present petitioner - original defendant.

#. The respondent herein filed the aforesaid Civil Suit and obtained temporary injunction by filing application in the said suit at Ex.5. The injunction was served and the matter was fixed for hearing, in the meantime, the petitioner submitted the aforesaid application at Ex.35 stating that the respondent had not filed affidavit in accordance with the requirement of Rule-3 of Order-39 of the Civil Procedure Code, and, therefore, the injunction stands terminated. After hearing the learned advocates for the parties the trial Court found that there was no reason to allow the said application and, therefore, the learned trial Judge dismissed the said application of the petitioner. Hence this Revision Application.

#. It has been contended here that the requirement of Rule-3 of Order-39 is very clear and according to said requirement a plaintiff is required to supply all necessary copies to the defendant and is further required to submit an affidavit showing the compliance thereof and the affidavit is required to be filed either on the same day or latest by the next working day. It has been contended that the affidavit has not been submitted in accordance with the said provisions and, therefore, injunction must stand vacated and the trial Court has committed serious illegality in not allowing the aforesaid application holding that the injunction has come to an end.

#. During the course of argument it has been borne out that though the affidavit was not filed by the respondent in accordance with the requirement of Rule-3 Order-39 of the Civil Procedure Code, 1908, the required copies were immediately served on the petitioner and there was no dispute about the same before the trial Court and even before him the said dispute has not been raised. This shows that the provisions contained in Rule-3 Order-39 of Civil Procedure Code have been complied with substantially and in spirit but only a affidavit has been missing and the learned advocate for the respondent has contended that through oversight such a affidavit has not been filed and the respondent is still prepared to file affidavit to that effect.

#. It is also the contention of the respondent that the matter was adjourned for about 13 times and, thereafter,

the learned advocate for the present petitioner original defendant retired from the proceeding. Another advocate appeared on behalf of the petitioner and, thereafter, since there was violation of the interim injunction the respondent submitted an application for taking appropriate action for the contempt of Court against the petitioner and, therefore, the said application has been filed. The Court has to consider said aspect also. This is a background under which the application was filed by the petitioner for holding that the injunction is inoperative.

#. It is true that in the case of Administrator of Shri Shakti Group, Chandrakant Natverlal Agravat vs. Hargovindbhai Shamjibhai & Sons, reported in 1993 (1) GLR 434, it has been laid down that if the requirement of Clause (a) and (b) of Rule-3 Order-39 are not complied then the order of the injunction cannot be said to be in consonance with law. In the present case I find that the Court had already directed the respondent to file affidavit in accordance with the Order-39 Rule-3 of the Civil Procedure Code, 1908, therefore, requirement of law was complied with by the trial Court. However, the respondent omitted to file affidavit though the copies were supplied in time. This shows that provisions of Order-39 Rule-3 have substantially and in spirit been complied and, therefore, this is not a fit case for exercising jurisdiction under Section 115 of the Civil Procedure Code. At the same time, it is also required to be considered that when the provisions are made in law it becomes a duty of the Court to see that they are complied with.

#. In above view of the matter, it is desirable that the provisions contained in Order-39 Rule-3 of the Civil Procedure Code, 1908, are placed to the notice of the Judicial Officers in the State in order to see that the provisions therein are complied with. They should also be directed to see that if an injunction is granted exparte, without notice to the other side, then in that event, they should pass a positive order directing the plaintiff to file affidavit in accordance with Rule-3 of Order-39 of the Civil Procedure Code, 1908. They should also place the matter on Board on the next working day for ascertaining as to whether the provisions of Order-39 Rule-3 are complied with. The office shall circulate this paragraph for the information of the judicial officers in the State working on civil side.

#. For the foregoing reasons this is not a fit case for interfering with the order of the trial Court in as much

as the requirement of Rule-3 Order-39 of the Civil Procedure Code, 1908, have been substantially complied with. This Civil Revision Application is ordered to be dismissed. No order as to cost. Interim relief stands vacated. The trial Court shall expedite hearing and disposal of the interim relief application pending before it, preferably within fortnight. Though the Revision Application is dismissed, it is required to be filed since there was a technical error on the part of the respondent and, therefore, the respondent shall pay cost of Rs.500/= to the petitioner.

(D. P. BUCH, J.)
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